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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

C. BROOKS CUTTER,

Plaintiff,

v.

FOOD AND DRUG ADMINISTRATION
and DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants.

No. 1:09-cv-00107-LJO-DLB

**PARTIES' STIPULATION TO STAY
ACTION AND RESET STATUS
CONFERENCE**

Defendants, the United States Food and Drug Administration ("FDA") and Department of Health and Human Services, by and through their attorneys, Lawrence G. Brown, Acting United States Attorney, and Yoshinori H. T. Himel, Assistant United States Attorney; and Plaintiff, C. Brooks Cutter, respectfully request this Court to enter a stay in the above-entitled action until August 11, 2009, and to reset the status conference to September 2009.

The complaint concerns a request for documents sent by Plaintiff to FDA under the Freedom of Information Act ("FOIA") on June 5, 2008 ("the Request"). The Request seeks copies of documents related to Medtronic's Sprint Fidelis leads that were approved by FDA for marketing under Premarket Approval Application ("PMA") P920015. FDA received the Request and has been processing it under its first-in-first-out procedures.

1 The parties here show that there is good cause for a stay until August 11, 2009, to give
2 Defendants additional time to complete processing the Request. On February 3, 2009, FDA's
3 Center for Devices and Radiological Health ("CDRH") estimated that it would take
4 approximately an additional six months from that date to complete its processing of the
5 Request. CDRH separates the FOIA requests it receives into different queues, or tracks,
6 depending on the length or complexity of the request, and processes the requests in each track
7 on a first-in-first-out basis. The Request is in CDRH's complex track because it cannot be
8 answered with readily available, already redacted documents. Instead, CDRH must gather all
9 responsive documents and review and redact them for FOIA-exempt information. The parties
10 have agreed to a stay until August 11, 2009, to permit FDA to process the Request once it has
11 reached the front of CDRH's queue.

12 The parties agree that FDA will provide Plaintiff with a list of documents being
13 withheld in their entirety, but will not prepare a Vaughn index of redacted information at this
14 time. The parties have further agreed that Plaintiff shall have two (2) weeks from the date he
15 receives the last document produced by FDA to decide whether to challenge any of FDA's
16 withholdings. If Plaintiff decides to challenge FDA's withholdings, FDA agrees to produce a
17 Vaughn index within thirty (30) calendar days after Plaintiff gives defense counsel of record
18 and OCC counsel a notice of his intent to challenge the withholdings.

19 If the Request has not been processed by August 11, 2009, and the parties cannot reach
20 agreement for additional time for FDA to complete its processing of the Request, Defendants
21 shall file a notice to that effect on or before August 31, 2009.

22 Based upon the foregoing, the parties move this Court to enter an order granting a
23 stay in this matter until August 11, 2009, consistent with the terms set forth in this stipulation,
24 and to continue the status conference set by Order filed January 16, 2009, from May 5, 2009,
25 until 9:00 a.m. on September 22, 2009, before Judge Beck.

26
27 Dated: March 23, 2009

/s/ C. Brooks Cutter
C. BROOKS CUTTER

1 Dated: March 11, 2009

LAWRENCE G. BROWN
Acting United States Attorney

2
3 By: /s/ Y H T Himel
YOSHINORI H. T. HIMEL
Assistant U.S. Attorney

4 Of Counsel:

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12
13

14 ORDER

15 Good cause appearing, the action is STAYED until August 11, 2009. The status
16 conference presently set for 8:45 a.m. on May 5, 2009, is CONTINUED until 9:00 a.m. on
17 September 22, 2009, before Judge Beck.

18 IT IS SO ORDERED.

19 Dated: March 27, 2009

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE